

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.8.505, 17.8.510 and)	PROPOSED AMENDMENT
17.8.514 pertaining to air)	
quality operation fees, annual)	
review of air quality permit)	(Air Quality)
fees, and open burning fees)	

TO: All Concerned Persons

1. On July 30, 2002 at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., July 17, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@state.mt.us".

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (3) remain the same.

(4)~~(a)~~ Annually, the department shall provide the owner or operator of each air contaminant source, required to pay an air quality operation fee, with written notice of the amount of the fee and the basis for the fee assessment.

~~(b)~~ (a) The air quality operation fee is due 30 days after receipt of the notice, unless the fee assessment is appealed pursuant to ARM 17.8.511. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 30 days after receipt of the notice. Any remaining fee, which may be due after completion of an appeal, is due immediately upon issuance of the board's decision or upon completion of any judicial review of the board's decision.

~~(c)~~ (b) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within 60 days after the billing

date, the department may impose a late payment charge of 10% of the fee (or any required portion of an appealed fee), plus interest on the fee (or any required portion of an appealed fee) computed at the interest rate established under 75-2-220(5)(a)(i), MCA.

(5) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is an administrative fee of \$400, plus ~~\$16.93~~ \$17.89 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

(6) through (9) remain the same.

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

17.8.510 ANNUAL REVIEW (1) No later than September 30 of each year, the department shall report to the board regarding the air quality permit fees which are anticipated for the next calendar year. This report shall include a description of the legislative appropriation to be recovered, the status of the specific appropriation account as of the end of the previous fiscal year, the emissions upon which such fees will be based, the ~~tier system~~ fee structure to be implemented, and the status of any anticipated rulemaking activity necessary to adopt the new fees.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

REASON: Pursuant to §75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Air quality operation fees are required for all facilities that hold an air quality permit, or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the

Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. This rulemaking would set the air quality operation fees for 2002.

The legislative appropriation for 2001 was \$2,287,674. The amount of the carryover was \$180,739. The total amount of pollutants reported for last year's fees was 117,477 tons, and the per ton component of the air quality operation fee was \$16.93.

The appropriation for 2002 is \$2,390,602, an increase of \$102,928 from last year. The total amount of pollutants reported for this year's fees is 112,416 tons. Based upon the appropriation, the carryover and the emission inventory, to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per ton charge to \$17.89. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per ton charge of \$16.93 with \$17.89.

Last year, the total amount of fees assessed was \$2,025,188. The amount of fees that would be assessed to meet this year's appropriation would be \$2,205,926, for an increase of \$180,738. This year's fees would be assessed for 487 facilities.

The Board is proposing to revise the numbering of ARM 17.8.505 to delete the "double earmark" in the numbering of the current 17.8.505(4)(a). This is necessary to conform the numbering of the rule to the current rule numbering style of the Secretary of State's Office.

The Board also is proposing to amend ARM 17.8.510 to eliminate the reference to the former tiered system of assessing different fees for various regulated pollutants. In 1998, the Board replaced a tiered system of air quality permit application fees and air quality operation fees, under ARM 17.8.504 and 17.8.505, respectively, with the current system of a uniform fee for each ton of air pollutant emitted, regardless of the type of pollutant. The Board is proposing to amend ARM 17.8.510 by substituting the phrase "fee structure" for the current reference to "tier system," to reflect the change from the tier system.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The major open burning air quality permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 17.8.610 (Major Open Burning Source Restrictions).

(a) The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (4)(b), below:

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year, multiplied by ~~\$15.84~~ \$13.32; plus tons of oxides of nitrogen emitted in the previous appropriate calendar year, multiplied by ~~\$3.96~~ \$3.33; plus tons of volatile organic compounds emitted in the previous appropriate calendar year, multiplied by ~~\$3.96~~ \$3.33; or

(ii) and (b) remain the same.

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The Board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2003. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2001, the major open burners reported 7691.4 tons of emissions, compared to 6562.1 tons for calendar year 2000, or an increase of 1129.3 tons.

The budget for operating the program for 12 major open burners in fiscal year 2003 is \$44,723.00, compared to a budget of \$43,886.00 for fiscal year 2002. The \$837.00 budget increase is due to expected increases of \$1,547.60 for personnel services, \$2,986.32 for contracted meteorological services, and \$155.00 for miscellaneous expenses, and due to expected decreases of \$2,000.00 for supplies and materials, \$135.00 for travel, and \$1,716.89 for indirect costs. Due to the increase in the emission inventory and the expected

decrease in expenses for the program, it is necessary to decrease the per ton charge to avoid assessing fees in excess of the program budget. The Board is proposing to decrease the permit fees from \$15.84 per ton of particulate, \$3.96 per ton of oxides of nitrogen, and \$3.96 per ton of volatile organic compounds emitted to \$13.32, \$3.33, and \$3.33, respectively.

The \$837.00 budget increase for this year would result in a total cumulative increase in fees of the same amount. This amount would be paid by the 12 major open burners.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at "ber@state.mt.us" and must be received no later than 5:00 p.m., August 6, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at "ber@state.mt.us" or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF ENVIRONMENTAL REVIEW

By: _____
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

DAVID M. RUSOFF, Rule Reviewer

Certified to the Secretary of State, [date].